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BOSTON'S COUNTY PROBLEMS¹

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While Boston is not a "county-ridden" city as are so many American cities, and while she is free from even a large portion of the more serious county problems² confronting other Massachusetts municipalities, still problems of considerable importance arising from Boston's relation to Suffolk county insistently demand solution in the interests of efficient government. Massachusetts has been a leader in municipal reform, yet the reforms which have been considered fundamental for city government have never been extended to Boston's administration of county affairs.

Boston's county functions fall into two classes: judicial and administrative.³ The exercise of judicial functions in Suffolk county is vested in a number of tribunals classified as courts of superior and courts of inferior jurisdiction. Of the former there are four:⁴ first, the supreme judicial court, a single judge of which holds jury terms in Boston for Suffolk county, and the full bench of which comprises the court of last resort in the state;⁵ second, the superior

¹ A portion of the material in this article appeared in a paper, "The City and County in Massachusetts," read by the writer before the American Political Science Association, 1911. See the *Proceedings* of the American Political Science Association, 1911, in Supplement to the *American Political Science Review*. VI, No. 1, pp. 61-72.

For a number of the facts in this article I am indebted to prominent business and professional men in Boston whose names for obvious reasons I am not permitted to use in citing authorities.

² Those relating to the office of county commissioners. Prior to the charter of 1909, the aldermen of Boston exercised the more important administrative functions—*i. e.*, those relating to county finances—which are vested in county commissioners in counties other than Suffolk. By the Boston charter of 1909, these functions were vested in the city council and mayor. *Mass. Acts*, chap. 486, sec. 3.

From an early date Boston alone of the cities of Massachusetts has borne the burden and enjoyed the advantages of exercising practically all the county functions. *Mass. Acts*, 1821, chaps. 109-110.

³ Judicial functions are the more important in Massachusetts counties since the city and town are the more prominent local administrative units.

⁴ In addition there are the eleven masters in chancery, having jurisdiction over Suffolk county. They are appointed by the governor and council, paid by fees only, and have authority to issue certificates authorizing arrest on mesne process.

⁵ The full bench of the supreme judicial court sits in seven places throughout the Senate.

court, the great trial court of the state, both civil and criminal terms of which are held by one or more justices sitting in Boston; third, the court of probate and insolvency, the judges of which are appointed especially for, and have jurisdiction only within, the county; and fourth, the land court which sits regularly in Boston but has state-wide jurisdiction. The judges of the several courts,⁶ the reporter of decisions of the supreme judicial court and the recorder of the land court are appointed by the governor and council of the state. The clerk of the supreme court for Suffolk county, the clerks of the superior court for civil and criminal business, and the register of probate are elected by the voters of Suffolk county. The remaining court officers and employees are appointed by the judges of the several courts or by the sheriff.

The exceptionally high standard set by the Massachusetts judiciary is generally recognized. Her courts have stood well the tests of actual experience. Nevertheless there remain certain problems connected with the administration of justice by the courts of superior jurisdiction in Suffolk county which demand careful consideration. This fact is recognized by no one more than by the members of the bar and bench of Boston. These problems are of two kinds: first, those relating to the "delays" which hinder "speedy and effective" rendering of justice; and second, those relating to the unequal burden imposed upon the city of Boston for the maintenance of the administration of justice.

Delays in the administration of justice are more serious in Suffolk county than in the other counties of Massachusetts on account of the centralization of legal business in Boston. Being the business center of the state, Boston furnishes the most convenient place for trying cases,⁷ the more prominent attorneys have their offices there, and many litigants have their places of business in Boston while living elsewhere in the state. Probably another important factor in causing delays is the accumulation of legal business in a few hands.⁸ Another cause of unnecessary delay is the duplication

⁶ All judges and justices of courts in Massachusetts are appointed by the governor with the advice and consent of the council; hold office during good behavior, and are removable by the governor on the address of both houses of the legislature. For the judges and justices of the several courts see diagram, opposite p. 136.

⁷ *Boston Finance Commission Reports*, I (1908), p. 400.

⁸ For example, upon a certain trial list for Suffolk county, 1,637 cases were represented by only twenty attorneys or firms. *Report of the Commission to Investigate the Causes of Delay in the Administration of Justice in Civil Action* (1910), p. 10.

of trials resulting from the privilege of a retrial before a jury in the superior court of cases first tried in an inferior court.⁹ The centralization of legal business in the hands of comparatively few firms in Boston, and the ease with which cases from inferior courts may be tried *de novo* in the superior court, inevitably result in the overcrowding of the dockets of the court sitting in Suffolk county.

Advocates of judicial reform in Massachusetts would not remove the evils by means of a radical alteration of the present judicial system, but through certain readjustments among the courts consistent with Massachusetts' traditional conservatism. As regards the supreme court, they would relieve it of jury trials, limit it more closely to "the general appellate jurisdiction"¹⁰ and confine the sittings of its full bench to Boston.¹¹

Among the changes recommended for relieving the congestion in the superior court it is proposed to transfer the trials of divorce cases to the probate court, and to abolish the double trial system.¹²

The congestion of business in the land court, it is claimed, is being materially relieved by the recent legislation,¹³ which prevents a double trial on questions of fact by providing that when a jury trial is claimed the case shall be removed to the superior court at once instead of awaiting an appeal after the case has been completed in the land court. It also provides for the transfer of actions from one court to the other, when it is found the action has been begun in the wrong court, without invalidating the prior proceedings.

A grievance more generally recognized, however, is that Boston is bearing an unjust proportion of the cost of litigation in the state.¹⁴ Boston being the metropolis has to bear the cost of much litigation which, it is claimed, should be conducted in counties other than Suffolk. For the same reason Boston has to pay large sums for the administration of criminal law, owing to the offenses committed there by persons residing outside the county. The city of Boston (for Suffolk county) pays the salaries of practically all the court officers, except the judges,¹⁵ of the courts of superior jurisdiction;

⁹ See below, pages 139-40.

¹⁰ *Report of the Commission to Investigate the Causes of Delay in Civil Action* (1910), p. 14.

¹¹ *Ibid.*, p. 15.

¹² See below, pages 139-40.

¹³ *Mass. Acts*, 1910, chap. 560; 1911, chap. 433.

¹⁴ *Boston Finance Commission Reports*, I (1908), p. 400; VII (1912), p. 290.

¹⁵ The judges are paid by the state.

COURTS HAVING JURISDICTION IN SUFFOLK COUNTY

COURTS OF SUPERIOR JURISDICTION

SUPREME JUDICIAL COURT
 1. Chief Justice.
 2. Justices (six).
 3. Clerk for the Commonwealth.
 4. Assistant Clerk for the Commonwealth.
 5. Clerk for Suffolk County.
 6. Assistant Clerk for Suffolk County.
 7. Reporter.
 8. Messenger.

SUPERIOR COURT
 1. Chief Justice.
 2. Justices (twenty-eight).
Civil Business
 1. Clerk. [(eleven)].
 2. Assistant Clerks
 3. Assistant Clerk in Equity.
 4. Stenographers (ten).
 5. Messenger.
Criminal Business
 1. Clerk.
 2. Assistant Clerks.
 3. Stenographer.

COURT OF PROBATE AND INSOLVENCY
 1. Judges (two).
 2. Register.
 3. Assistant Registers (two).
 4. Clerk.

LAND COURT
 1. Judge.
 2. Associate Judge.
 3. Recorder.

MASTERS IN CHANCERY*
 1. Eleven for Suffolk County.

COURTS OF INFERIOR JURISDICTION†

BOSTON JUVENILE COURT
 1. Justice.
 2. Special Justices (two).
 3. Clerk.

CHELSEA POLICE COURT‡
 1. Justice.
 2. Special Justices (two).
 3. Clerk.

EAST BOSTON DISTRICT COURT
 1. Justice.
 2. Special Justices (two).
 3. Clerk.

MUNICIPAL COURT OF THE CITY OF BOSTON
 1. Chief Justice.
 2. Associate Justices (eight). [(two)].
 3. Special Justices
Civil Business
 1. Clerk [(six)].
 2. Assistant Clerks
Criminal Business
 1. Clerk [(six)].
 2. Assistant Clerks
Appellate Division
 1. Justices (three).

BRIGHTON DISTRICT MUNICIPAL COURT
 1. Justice.
 2. Special Justices (two).
 3. Clerk.

CHARLESTOWN DISTRICT MUNICIPAL COURT
 1. Justice.
 2. Special Justices (two).
 3. Clerk.

DORCHESTER DISTRICT MUNICIPAL COURT
 1. Justice.
 2. Special Justices (two).
 3. Clerk.

ROXBURY DISTRICT MUNICIPAL COURT
 1. Justice. [(two)].
 2. Special Justices
 3. Clerk.
 4. Assistant Clerk.

WEST ROXBURY DISTRICT MUNICIPAL COURT
 1. Justice.
 2. Special Justices (two).
 3. Clerk.

SOUTH BOSTON DISTRICT MUNICIPAL COURT
 1. Justice. [(two)].
 2. Special Justices
 3. Clerk.
 4. Assistant Clerk.

* Not strictly speaking a court of superior jurisdiction. See page 134, note 4. † For the territorial jurisdiction of the several courts see page 138.
 ‡ The different terms, police, district and municipal courts are applied to tribunals of similar jurisdiction for historical rather than functional reasons.

and defrays the cost of the accommodations¹⁶ for the courts incurred while administering justice for the state at large as well as for the county.¹⁷ For the purpose of granting Boston the desired relief a bill was introduced,¹⁸ in 1912, into the legislature providing that the state should pay annually to Suffolk county an amount equaling one-third of the expenses incurred by the city for the maintenance of the supreme judicial court, the superior court for Suffolk county, and the land court, and one-third of the cost to the city of heating, lighting and care of the Suffolk county court house.¹⁹ The bill failed to pass. However, a step towards recognizing the justice of Boston's contention in this matter had been previously taken by the enactment of a provision requiring the state to bear one-third of the expenses incurred for enlarging the Suffolk county court house.²⁰

An alternative proposal for removing the injustice is that the state shall bear all the expenses of the above-named courts throughout the state.²¹ This seems a fairer and more equitable division of the burden of judicial administration. These courts are in reality state courts, the laws enforced by them are state laws; hence why should not the total cost be borne by the state and equitably distributed among the people of the entire state through taxation?

The tribunals of inferior jurisdiction in Suffolk county consist of nine co-ordinate municipal, district and police courts,²² and the juvenile court of Boston. The municipal district and police courts "have original criminal jurisdiction exclusive within their several districts of all misdemeanors, except conspiracies and libels, and of all

¹⁶ Providing quarters, heating and lighting, janitor service, stenographic work, postage, printing, etc.

¹⁷ In 1911-12 Boston expended for the supreme judicial court \$37,932.04; for the superior court for civil business \$338,821.35; for criminal business \$178,998.95; for the land court \$4,105.86. The above amounts do not include the expense of providing accommodations in Suffolk county court house. Maintenance of the court house cost, for the year 1911-12, \$78,133.87. *Auditor of the City of Boston Report*, 1911-12, pp. 186-195.

¹⁸ On the recommendation of the Boston Finance Commission.

¹⁹ *Boston Finance Commission Reports*, VII (1912), p. 37.

²⁰ *Mass. Acts*, 1906, chap. 534; 1908, chaps. 215, 603; 1910, chap. 522.

²¹ *Boston Finance Commission Reports*, VII (1912), p. 290.

²² They are: municipal court of the city of Boston, whose judicial district embraces wards 6 to 12, and 16 to 18; municipal court of the Brighton district, ward 25; municipal court of the Charlestown district, wards 3 to 5; municipal court of the Dorchester district, ward 24; municipal court of the Roxbury district, wards 19 to 22; municipal court of the South Boston district, wards 13-15; municipal court of the West Roxbury district, ward 23; East Boston district court, wards 1 and 2, and the town of Winthrop; Chelsea police court, Chelsea, and Revere. See diagram opposite page 136.

felonies which are punishable by imprisonment in the state prison for not more than five years."²³ In addition all the courts, except the municipal court of the city of Boston, have jurisdiction in juvenile cases. Furthermore they have "civil jurisdiction of cases in the municipal court of the city of Boston, not over \$2,000" and in the other courts, not over \$1,000. The municipal court of the city of Boston, in addition to the criminal and civil jurisdiction within its own district, has civil jurisdiction throughout the county.²⁴ The Boston juvenile court has jurisdiction only within the district covered by the municipal court of Boston.

From the above it is evident that Suffolk county still retains its old system of "segregated courts," still permits to exist ten autonomous, decentralized, wholly independent courts each with its complete and fully equipped organization, with local justices lacking the essential "points of contact" with the other justices of the county, and without any central supervision whatever. Such a system may possibly have had a *raison d'être* when the courts were severally established almost half a century ago, when local sentiment was still dominant and present-day facilities for transportation and communication were lacking. But to-day, in a closely compact urban center with civic, social and economic unity there is no longer any justification of such an antiquated system.

In the light of the experience of other large cities it is difficult to understand how such a system in Boston works as well as it does. That the system has not produced unbearable conditions testifies to the high character of the judges of these courts.

There are, however, three evils due to the system, which are receiving the careful attention of Boston's public spirited men.²⁵ The first is the lack of uniformity in judicial decisions. This results in "a radical and multiform variation and antagonism of practice in matters essential to the enforcement of law."²⁶ For example: the length of probation terms varies among the several courts from three months to two years; again, an offender punished in one court by a small fine may in another court for a similar offense be given a

²³ *Report of the Commission on Inferior Courts of the County of Suffolk* (1912), p. 6.

²⁴ Ninety-two per cent of the civil cases in the county are brought to this court. *Ibid.*, p. 9.

²⁵ *Report of Commission on Inferior Courts of the County of Suffolk* (1912).

²⁶ *Ibid.*, p. 7.

long jail sentence.²⁷ Likewise, in civil business the courts are working under several different sets of rules,—certainly a complicated system which greatly inconveniences both the bar and litigants.²⁸

The second evil is the uneconomic administration of the business of the courts. Official salaries furnish the largest item of expense.²⁹ Such salaries are based upon the population of the several judicial districts rather than upon the work done by the several courts.³⁰ The result is that judicial administration in certain districts costs, for official salaries, from two-fifths to one-half more than in other districts. Furthermore there is an unnecessary waste resulting from the decentralized buying of supplies in small quantities for the clerical departments, from the traveling expenses of probation officers, and from the duplication of prison vans, etc.³¹

The third evil is the duplication of civil trials resulting from the present method of *de novo* retrial of facts in cases appealed from the inferior courts to the superior courts. The situation is clearly stated by the commission which investigated (1909) the causes of delay in civil actions.³² "The losing party in the lower court by merely giving a bond for costs may enter an appeal, the result of which is that the trial in the lower court goes for absolutely nothing,—tends to make the trial in the lower court little more than a preliminary skirmish which simply takes up the time of a tribunal amply qualified to make final determination of the rights of the parties and results in an expense and delay inconsistent with the economy of a modern judicial system." Moreover, the defendant, it is claimed, at times takes unfair advantage of the plaintiff by making a frivolous defense, permits an adverse decision in the inferior court, then demands a jury trial in the superior court where in the retrial he has the advantage of an advance knowledge of the plaintiff's case. Leading members of the Boston bench express the opinion that the major portion of such appeals results not so much from the desire for a jury trial *per se*, but from the hope for a more favorable verdict, or for the

²⁷ *Report of Commission on Inferior Courts of the County of Suffolk* (1912), p. 8.

²⁸ *Ibid.*, p. 9.

²⁹ For example: during 1911-12 in the municipal court of the Charlestown district official salaries cost \$10,178.81 out of a total expense of \$11,680.72. *Auditor of the City of Boston Report*, 1911-12.

³⁰ *Report of the Commission on Inferior Courts*, etc. (1912), p. 10.

³¹ *Ibid.*, p. 11.

³² *Report of the Commission to Investigate Delay in the Administration of Justice in Civil Action* (1910) p. 21.

advantages gained by delay. Delay is not the only grievance arising from the duplication of civil trials. Much unnecessary expense results. It is estimated that civil trials in the Suffolk county lower courts in which the judgment is entirely vacated by appeal, costs the city annually \$15,000.³³

The commission on inferior courts in Suffolk county, in its report to the legislature, 1912, recommended a plan for the eradication of the evils described above. It was proposed to remove the lack of uniformity in judicial decisions and the uneconomic and wasteful administration of business in the courts by the consolidation of the ten inferior courts in the county into a single court. Such court³⁴ was to have jurisdiction throughout the county. A juvenile division of the court having county-wide jurisdiction was recommended.

In the light of the favorable experiences of Chicago, Cleveland and other cities with such reformed courts, and in view of the earnest support of the leading members of the Boston bar and the "overwhelming sentiment of the community as expressed in the hearings" before the commission, in favor of the above changes, it is surprising that the Massachusetts legislature refused to authorize the reforms. The proposed consolidation of the courts was defeated, probably by the opposition of the judges who considered their positions in the light of "vested rights," supported by the traditionally conservative elements in the legislature, which dreaded disturbing the *status quo* for fear it would lead to further attacks upon "vested rights."

The legislature, however, was willing to make a beginning toward removing the "double trial" evil. An act was passed providing that if a party elected to bring "in the municipal court of the city of Boston any action or other civil proceeding which he might have begun in the superior court he shall be deemed to have waived a trial by jury and his right of appeal to the superior court."³⁵ It further provided for an appellate division of the municipal court of the city of Boston "for the rehearing of matters of law arising in civil causes." The appellate division was made to consist of three justices of the court designated by the chief justice. Another section

³³ *Report of the Commission on Inferior Courts* (1912), p. 13.

³⁴ It was "to consist of one chief justice, fifteen associate justices, ten special justices and one associate and two special justices for juvenile work." *Report of the Commission on Inferior Courts* (1912), p. 17.

³⁵ *Mass. Acts*, 1912, chap. 649, sec. 2.

provided that appeals from the appellate division may be taken directly to the supreme judicial court of the state. Since the municipal court of the city of Boston has jurisdiction in civil cases throughout the county and 92 per cent of such cases are tried in that court, the act goes far toward obviating the evil of duplication of trials in civil causes. Time has not yet sufficiently tested the change, but it is believed that if the reform works well in practice it will be extended to all the inferior courts in Suffolk county.

The public officials of the city of Boston perform a large portion of the administrative functions exercised, in counties other than Suffolk, by county officials. The important fiscal functions, elsewhere vested in the county commissioners, are, for Suffolk county, vested in the city council and mayor.³⁶ The treasurer³⁷ and the auditor of accounts of the city of Boston act as treasurer and auditor for Suffolk county. There remain, however, seven county offices, filled by popular election, and a number of appointive county positions filled by the governor of the state, by the judges of the courts or by the heads of county departments. Six of the seven elective county officers are made elective by a constitutional provision.³⁸ That provision stands as a monument to the effectiveness with which detailed constitutional provisions block the governmental reorganization demanded by present-day conditions.

From the early times to within recent years the county offices were held by the old New England families. These offices were, on the whole, honestly if not always efficiently administered. By virtue of high traditions and customs surrounding these offices a seemingly absurd system has worked fairly well. For example: tradition demanded that these elective offices should not be made the object of party spoils or subject to frequent rotation. Custom dictated that when once in office a man should not be removed so long as he honestly performed his duties. He was nominated by both parties and contributed to the campaign funds of both. The offices, however, have been so far removed from the people that the voters have taken little active interest in them.³⁹ Such complacency

³⁶ *Mass. Acts*, 1909, chap. 486, sec. 3. Prior to the charter of 1909 such functions were vested in the aldermen of the city of Boston. These functions embrace little more than the making of appropriations for the county expenses.

³⁷ *Revised Laws*, chap. 21, sec. 5.

³⁸ *Mass. Constitution, Amendments*, Art. 19. It provides that the legislature shall prescribe by general law for the election by the people of sheriff, registers of probate, clerks of the court, and district attorneys.

³⁹ This is equally true of county offices in the other counties of the state.

on the part of the public has permitted the "county ring"⁴⁰ to keep the offices under its undisturbed control. It is claimed that as a rule the sheriff of Suffolk county has been the head of the county ring and the patronage of the office, which is extensive, has been distributed solely on political considerations. Up to a few years ago the subordinate offices in the sheriff's department were divided equally between republicans and democrats. When it was a democrat's "turn" to be appointed, no republican, however superior in qualifications, could be selected. Under the present régime the offices, as a rule, go to the dominant party.

With the "racial displacement" which has been taking place in eastern Massachusetts in recent years the Irish-democrats have supplanted the old New England republicans in the county offices as well as at the "City Hall." Notwithstanding the transition from one race and party to another, the former traditions surrounding the offices have been, in the main, retained. The Irish have proved their practical capacity for government by readily assimilating the ideals of government prevailing in the community in which they live. In general their standards of government are neither higher nor lower than those of the Anglo-Americans whom they have displaced. It is generally conceded that the offices are now being as honestly administered as under the old régime, and in certain instances modern and efficient methods⁴¹ have supplanted the antiquated methods to which some of the former officers had clung.

Notwithstanding the belief that the present system of elective officers works fairly well in spite of the possibilities for evil, there is certainly little practical reason for the election of county officials in Boston. Unquestionably the interest of efficient administration of court business demands the appointment, rather than the popular election, of the clerks of the courts.⁴²

There is no fundamental reason why there should continue to

⁴⁰ "County rings" are strongly intrenched party organizations, the objects of which appear to be the perpetuation of their members in office and the distribution of appointive positions mainly for party or personal ends.

⁴¹ A conspicuous example is the change made in the office of register of deeds by the present generally conceded efficient register, W. T. A. Fitzgerald.

⁴² Recently popular elections lost for the city the efficient services of a clerk of the supreme court who brought to the execution of the duties of that office twenty-five years' experience and training as an assistant clerk in the municipal court, superior court, and supreme court, and as clerk of the supreme court. The officer who displaced him, although a lawyer of ability, had no special training for the position.

be a registry department for the county and a separate one for the city. Why could not these separate departments be consolidated into a registry department with a head appointed under civil service regulations, similar to that of the treasurer or the auditor of the city of Boston? Abundant evidence supports the contention that it would be a step toward more efficient administration and a higher professional standard to place the county departments under heads appointed under civil service rules. In such a case, however, experience and character should be given legitimate weight in establishing ratings among those eligible to appointment. Since the functions exercised by these departmental heads are administrative rather than policy-making, why should they be elected? To make these offices appointive would free the officers from the bondage of the political party to which they must look for re-election. It would further encourage men of first-rate ability to make special preparation for the positions, knowing that long tenure of service with an opportunity for advancement followed an appointment. The city could then avail itself of the services of experts instead of amateurs. Such a change would not only be in harmony with the "short ballot" principle, but, by eliminating a number of elective offices hitherto filled by party organizations, would also further aid the city of Boston in freeing herself from the influence, in city affairs, of permanent party organizations.

One of the striking anomalies in Massachusetts government is that the civil service laws which apply to city appointees⁴³ have never been extended to county appointees. The reason commonly assigned for this is that the "county rings" desired to preserve their patronage unembarrassed by civil service rules, and that they had sufficient influence in the legislature to prevent the passage of any civil service law unless the counties were omitted. It seems that the "county rings" in Massachusetts have great political influence which they have invariably exercised upon the members of the legislature whenever legislative authority has been invoked for the extension of civil service to the counties.

In practice the failure to apply civil service laws to county appointments has resulted in the exclusion of practically all qualified persons except the friends and acquaintances of the appointing officers. The quality of the appointment depends entirely upon

⁴³ *Mass. Acts*, 1884, chap. 320.

the character and ability of the official who is for the time being the department head, or on the party organization which controls him. Appointments as a rule are treated as a private matter and political and personal considerations commonly enter into the selection. The appointee is inevitably under obligations, not to the public, but to the appointing officer. It is probably true that subordinate officials are rarely disturbed for political reasons unless prominently offensive in political matters. But the tendency seems to be not only to fill vacancies with friends, but also to create new places for them. The natural result is increased cost of administration and probable loss of efficiency.

To illustrate, let us take two examples. The penal institutions of Suffolk county are under the jurisdiction of the penal institutions department in Boston.⁴⁴ The penal institutions commissioner, the head of the department, is appointed by the mayor subject to the confirmation of the civil service commission. He is, therefore, considered a city official, and his appointments for the city office are subject to the civil service regulations.⁴⁵ The Deer Island house of correction is under the jurisdiction of the penal institutions commissioner. Nevertheless it is considered a county institution whose officers and employees are exempted from the civil service laws. By statute the penal institutions commissioner is authorized to appoint the master of the house of correction who in turn selects his subordinates.⁴⁶ In practice it probably works out that the Deer Island officers and employees are selected by the party organization in power in the city.⁴⁷ As a result, it is claimed, unfit appointments have been common. An investigation by the Boston Finance Commission⁴⁸ discovered among the officers and employees of the house of correction men who had been dismissed for cause from state or city appointive positions,⁴⁹ men who were guilty either of providing the prisoners with or of permitting them freely to procure morphine and cocaine⁵⁰, and men who were seen drunk not only while on leave of absence, but even while on duty.⁵¹ The commission, finding a

⁴⁴ *Mass. Acts*, 1897, chap. 395, sec. 5; 1899, chap. 245.

⁴⁵ The Attorney General of the state has so ruled.

⁴⁶ *Revised Laws*, Chap. 224, sec. 16.

⁴⁷ *Boston Finance Commission Report*, V (1910), pp. 86-87.

⁴⁸ *Ibid.*, pp. 84-94.

⁴⁹ *Ibid.*, p. 87.

⁵⁰ *Ibid.*, p. 89.

⁵¹ *Ibid.*, p. 87.

number of the officials "guilty of the same offense as three-fourths of those who are receiving punishment under their charge," drew the conclusion that, "though the institution was meant to be a reformatory, it more nearly resembles a school for crime."⁵² It is difficult to see how conditions may be permanently improved so long as subordinate officials are appointed through political influence which they believe is strong enough to keep them in office notwithstanding their misconduct.⁵³

A second specific example is found in the recent appointment of the clerk of the municipal court of the city of Boston.⁵⁴ Since the clerk is not under civil service regulations the dominant political organization in Boston, it is claimed, was able to bring pressure to bear on the governor's appointment. It is alleged, that the appointment was made solely for political purposes. The appointee had not served an apprenticeship in any inferior clerical position, and was qualified for the position neither by training nor previous experience. The number of appointees in that department, and the cost of administration, have been increased, it is claimed, as a direct result of this appointment.

County officers, especially county commissioners and sheriffs, have taken a most determined stand against the extension of civil service laws to county appointees in general. Many of these officers, I doubt not, honestly believe that the good of the service demands the continuation of the present system. They contend that the sheriff should be left free to select unhampered the members of his "official family," since he is required to furnish a bond large enough to cover "every official act of his deputies." They have little confidence in civil service examinations as a practical, efficient method of selecting men especially fitted for subordinate positions. A man of long and successful experience as a county official recently stated to the writer that he "should as soon think of applying civil service examinations to the selection of a wife as to the selection of any member of an official family." They contend further that such officers as keepers of jails and masters of houses of correction must be selected preeminently for their special fitness for the work required outside of their ability to pass an examination. And although a civil

⁵² *Boston Finance Commisison Report*, V (1910), p. 91.

⁵³ *Ibid.*, p. 93.

⁵⁴ The clerks as well as the justices of the municipal court are appointed by the governor.

service examination furnishes an officer "well equipped physically and mentally, it cannot possibly adequately test his moral temperament or social virtues."

These officers who inevitably have a personal interest in retaining unhampered the authority to select their subordinates are supported by persons, who from entirely impersonal considerations, believe that county officers who having to do directly with the courts should not be brought under civil service regulations. Certain men go so far as to assert that it is presumptuous on the part of any civil service commissioners to put themselves up as an authority greater than the judges of the courts.

On the other hand, it is the opinion of certain men⁵⁵ of practical experience that the public would receive greater protection through the civil service commission than they have received or are now receiving from the judges. If we grant that civil service laws should result not only in raising the standards of efficiency in public service, but also in giving to all qualified persons an equal opportunity of attaining office, does it not logically follow that clerical positions in the courts should be brought under civil service regulations? For, in case of appointments made by the judges personally, all qualified persons are necessarily excluded except the friends of the judges or those recommended to the judges by their comparatively small circle of friends.

Many men of experience in office are convinced that the extension of civil service to county appointees would not only increase the efficiency of the service and give all competent candidates a fair and equal opportunity, but would also be of great advantage to the officials who now have the appointing power. For in his appointments the elected official, if he hopes for re-election, is now forced to respect the importunities of the party politicians. The most convincing argument in favor of the extension of civil service laws to the county appointees comes from a comparison of the service rendered by the non-civil service appointees with that of the state or city appointees under civil service. Moreover, if civil service laws are necessary for city appointments, where the appointing officer has the public attention continually centered upon him, how much more necessary are they for county appointments where the appointing officials are so far removed from the people that they escape the sobering effect of a focused public scrutiny.

⁵⁵ Men in no way connected with the civil service commission.

Another set of Boston county problems relates to county finances. The Boston Finance Commission pointed out⁵⁶ in 1908 that there was no legal limit upon taxation for county purposes, "no effective check on the increase of salaries and the creation of new places;" and a "crude system of estimates and appropriations" existed. Such a system resulted in an increase in county general expenditures of about 97 per cent, within fifteen years prior to 1908, in contrast with an increase of about 32 per cent in population and 51 per cent in valuation.⁵⁷ The Boston city charter of 1909, however, has remedied certain of these difficulties. The system of appropriations and expenditures under the new charter furnishes a much more effective check on unnecessary county expenditures than was possible under the previous conditions. The heads of the county departments are required to submit annually to the mayor of Boston itemized estimates of the expenditures of their departments. Such estimates are examined by the mayor, and, at his discretion, are incorporated in the annual budget which is then submitted to the city council for its approval. The council may omit or reduce, but may not add or increase any item.⁵⁸

Perhaps the most effective check on county expenditures is the Boston Finance Commission. It has the right (of which it makes the fullest use) to investigate county appropriations and expenditures and report its findings to the mayor and city council, the legislature, or the governor of the state.⁵⁹ Nevertheless, the rate of increase in the general county expenditures continues disproportionately large. The increase for 1911-12 over such expenditures for 1910-11 was about $8\frac{1}{3}$ per cent.⁶⁰ Probably no small item in the increased expenditures in certain county departments arises from the "new places" which, it seems, may still be created too easily. There is still no legal limit on taxation for county purposes. County expenditures are borne by the city. However, the tax limit of \$10.55 on each \$1,000 of assessed valuation⁶¹ does not apply to county expenditures. Over and above the tax limit, the city may raise by taxation an unlimited amount for county purposes. The city debt limit of $2\frac{1}{2}$ per cent of the assessed valuations⁶¹ includes the county debts

⁵⁶ *Boston Finance Commission Reports*, I (1908), pp. 392-403.

⁵⁷ *Ibid.*, p. 393.

⁵⁸ *Mass. Acts*, 1909, chap. 486, sec. 3.

⁵⁹ *Ibid.*, chap. 486, sec. 18.

⁶⁰ *Boston Statistical Department, Special Publications*, No. 19, pp. 27, 32.

⁶¹ Upon the average assessed valuation for the three preceding years less abatements.

since the city pays all the county expenses. In practice, however, the city debt limit amounts to very little in checking county expenditures, for most loans for county purposes are made under special statutes outside the statutory limit of indebtedness.

So far the county finances have not seemed sufficiently burdensome to demand a tax or debt limit for county expenditures.⁶² But if the expense of the administration of county departments continues its present rate of increase, and if Boston is not in some manner relieved from bearing a disproportionate share of the expenses of litigation in the state, some arrangement for both a debt and a tax limit for county expenses will probably be demanded.

The present method of purchasing supplies for the county departments is, to say the least, uneconomical. The supplies for the different county departments are not purchased through the city supply department, but by each department head independently. There is absolutely no attempt at standardization of supplies for the county departments. There is not even the limited amount of standardization which is applied to city supplies. Efficient business administration demands that, since the city pays county expenses, supplies for both should be standardized and purchased through a single supply department.

Boston's relation to the other municipalities in Suffolk county, namely, Chelsea, Revere and Winthrop, is a further source of questionable expense. Chelsea, Revere and Winthrop are considered a part of Suffolk county for the purposes of the administration of justice and the election of county officials.⁶³ These municipalities, however, have no share in the ownership of, or jurisdiction over, county property, the title to which is vested exclusively in the city of Boston. At the same time they are freed from taxation for county purposes, since the entire county expense is by law charged to the city of Boston. Thus they receive the benefit, but do not share the expenses, of the administration of justice. Boston not only defrays the expenses of courts of superior

⁶² The actual expenses for county purposes are small compared with those for the city; for example, for 1911-12 the actual expenses on account of the county of Suffolk were \$1,636,168.09 in comparison with \$33,341,529.32 on account of the city of Boston. *Auditor of the City of Boston Report* (1911-12), pp. 182, 199.

⁶³ For purposes relating to the jurisdiction of county commissioners, however, Revere and Winthrop are under the authority of the commissioners of Middlesex county and the electors of those towns vote for commissioners of that county, while in Chelsea the aldermen of the city exercise in most cases the functions of county commissioners. (*Revised Laws*, chap. 20, sec. 34.)

jurisdiction sitting in the county, but she also bears the greater share of the cost of the Chelsea police court.⁶⁴ In this connection Boston suffers a further slight injustice from a general law for all counties which provides that "fines in police or district courts go to the city or town in which the offense is committed." As a result of this law Revere and Winthrop, which contribute nothing to the maintenance of the courts, make a clear profit from the fines thus received.⁶⁵ The legislature in 1911 attempted to eliminate the injustice by passing an act providing that upon application by any of the municipalities in Suffolk county the supreme judicial court should appoint a commission to investigate and report its decision concerning the adjustment and apportionment of the county expenses among the several municipalities, and that "the decree of the court confirming the decision shall be final and binding."⁶⁶ The act, however, was declared (May, 1912) by the supreme judicial court of Massachusetts unconstitutional on the ground that it was "an attempt to transfer to the judicial department a legislative power",⁶⁷ which is contrary to the constitutional provision declaring that ". . . the judicial shall never exercise the legislative or executive powers or either of them; to the end it may be a government of laws and not of men."⁶⁸ This decision, however, leaves the legislature free to act directly in the matter should it choose to do so. A bill has just been introduced (March, 1913) providing for the appointment, by the governor, of a commission composed of non-residents of Suffolk county, authorized to consider the adjustment of Suffolk county expenses and report a suitable bill to the legislature in January, 1914. There is at present a movement on foot to annex Revere to Boston. The apparently growing demand for annexation to Boston of the contiguous municipalities may enter into the solution of the problem of Suffolk county expenses.

A survey of Boston's county problems should not be dismissed without a consideration of the relation of the city and county to metropolitan Boston.⁶⁹ Metropolitan Boston, or "Real Boston,"

⁶⁴ *Boston Finance Commission Reports*, I (1908), 435. During the year 1911-12 Boston paid on account of Chelsea police courts the sum of \$13,932.13. *Auditor of the City of Boston Report* (1911-12), p. 195.

⁶⁵ *Boston Finance Commission Reports*, I (1908), p. 436.

⁶⁶ *Mass. Acts*, 1911, chap. 482.

⁶⁷ 212 *Mass. Reports*, 127.

⁶⁸ 212 *Mass. Reports*, 128. Quoting *Mass. Constitution*, Art. 30 of the Declaration of Rights.

⁶⁹ *Proceedings* of the American Political Science Association (1911), pp. 70-72.

in contradistinction to municipal Boston, comprises an area of four hundred and seventeen square miles with a population of about a million and a half, while municipal Boston has an area of only thirty-eight square miles and a population numbering a little more than six hundred and seventy thousand. While there has grown up a great urban center with a population bound together by common commercial and industrial interests, no central government for the whole has been devised. Over this urban population there are thirty-nine different municipalities, five counties, the metropolitan park commission, the metropolitan water and sewer boards, each independent of the others and under the jurisdiction of no central authority except the state legislature.

With the consolidation of the metropolitan area into a great industrial and commercial unit has come a consciousness of a community of interests which causes many to look with impatience upon the existing decentralized, segregated system of local government. Such a system with its conflicting municipal and county jurisdictions, it is believed, hampers the effective solution of the industrial, commercial and social problems⁷⁰ common to the entire district. The result has been a more or less intermittent agitation for the adoption of some form of governmental cooperation within the metropolitan district.

As long ago as 1896, a metropolitan commission submitted to the legislature a plan for bringing all the municipalities within the metropolitan district into "the boundaries of a single county."⁷¹ Such a county should "have larger legislative and administrative powers than counties in . . . (the) state . . . (had) hitherto possessed."⁷² The existing counties and metropolitan boards within the district were to be abolished and their functions vested in the newly-created county government. The county, according to the commission's proposal, was to be governed by a "county council" in which the cities and towns of the metropolitan district should have "reasonable representation."⁷³ Hostility of the county interests and the spirit of local autonomy in the several

⁷⁰ Such as "developing industrial sites and centers" and "an adequate system of terminal facilities". Pamphlet *Real Boston* issued by Boston Chamber of Commerce, Dec., 1910, p. 5.

⁷¹ *Report of the Metropolitan District Commission* (1896), p. 3.

⁷² *Ibid.*, p. 6.

⁷³ *Ibid.*, p. 41.

municipalities probably were the chief factors in defeating the proposed union.

Since 1896 the question of governmental cooperation in some form or other has been almost continually before the people of the metropolitan district. Recently, the Boston Chamber of Commerce has been leading the agitation for the federation of metropolitan Boston. It favors the creation of a metropolitan council with "advisory powers only,"⁷⁴ consisting of representatives of thirty-nine cities and towns within the district. A somewhat similar proposal has been made by the "metropolitan plan commission" created by the legislature in 1911. A bill before the legislature at the present time (March, 1913) contemplates the consolidation of the metropolitan district into a single municipality.⁷⁵ The status of public opinion, however, seems to preclude, for the time being at least, the possibility of accomplishing the proposed consolidation. The desire to retain local autonomy and the mutual jealousies among the several municipalities are prominent hindering factors. Perhaps the most obvious obstacle to consolidation is the fear of complication growing out of the liquor license question.⁷⁶ Certain public-spirited men in Boston further oppose such a change on the ground that under the present standards of municipal government it would result merely in the consolidation of "the political power of mercenaries" which would aggravate rather than reduce the existing governmental evils.

It is noteworthy that the more recent proposals for the governmental unification of the metropolitan district have not contemplated disturbing in any manner the boundaries or functions of the counties within the district. At present it seems probable that the solution of the problem of a "Greater Boston" will be attempted through the slower process of piecemeal annexation and that the present illogical and antiquated position of the counties in the district will not soon be disturbed. However, it is difficult to believe that in the great urban community comprising metropolitan Boston, a system of county government can permanently remain, the boundaries and functions of which conform to eighteenth century local conditions rather than to those of the present day.

⁷⁴ Pamphlet *Real Boston* published by the Boston Chamber of Commerce, March, 1911.

⁷⁵ House Bill Number 1119, "an act to provide for a Greater Boston by the consolidation into one municipality all cities and towns lying wholly or partly within ten miles of the State House."

⁷⁶ Boston is "wet" while the surrounding municipalities within the urban district are "dry."